Phoenix Coca-Cola Bottling Company *and* United Industrial Service, Transportation, Professional and Government Workers of North America of the Seafarers International Union of North America, Atlantic, Gulf and Inland Waters District, AFL–CIO. Cases 28–CA–16595 and 28–CA–16908

August 1, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND COWEN

On September 28, 2001, Administrative Law Judge William L. Schmidt issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party filed answering briefs, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order.[2]

The Respondent excepts arguing, among other things, that the judge erred by failing to find that it was not required to provide the Union with information it requested on November 21, 2000, because the Union sought to use this information as a discovery tool for pending unfair labor practice charges. We reject this defense. The unfair labor practice charges on which the Respondent based this defense were withdrawn prior to the hearing in this case. Further, the Respondent—in its posthearing brief to the judge—stated that based on this withdrawal it "can now reveal information requested by the Union . . . without fear that the Union is using its request as a means for discovery."[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Phoenix Coca-Cola Bottling Company, Tempe and Prescott, Arizona, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

MEMBER COWEN, dissenting.

This case presents a straightforward question of whether the Respondent violated the National Labor Relations Act by refusing to provide the Union with requested information regarding certain nonunit employees. As the administrative law judge recognized, such information is not presumptively relevant, and a respondent has no obligation under the Act to provide such information unless the union establishes that such information is "relevant and necessary" to its function as the collective bargaining representative of the respondent's employees. See *Excel Rehabilitation & Health Center*, 336 NLRB No. 10 at fn. 1 (not included in bound volumes) (2001); *Bohemia, Inc.*, 272 NLRB 1128 (1984); see generally *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956); *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Moreover, to establish relevance the union must do more than generally claim that it needs the information "to intelligently and effectively represent the bargaining unit employees." See *Island Creek Coal Co.*, 292 NLRB 480, 490 fn. 19 (1989) (generalized conclusionary explanation insufficient to demonstrate relevance); *Uniontown County Market*, 326 NLRB 1069, 1071 (1998) ("general avowals of relevance such as 'to bargain intelligently' and similar boilerplate are insufficient"); accord: *E. I. du Pont & Co., v. NLRB*, 744 F.2d (6th Cir. 1984); *Sole Glass & Glazing Co. v. NLRB*, 652 F.2d 1055 (1st Cir. 1981). Indeed, the Board has indicated that to demonstrate relevance a Union must identify specific contractual provisions it believes may have been violated. See *Island Creek Coal Co.*, supra.

[1] For the reasons found by the judge, we reject the Respondent's argument that the Union failed to explain the relevance of its request for the alleged nonunit information. Contrary to our dissenting colleague, we agree with the judge that the record shows that the Union satisfied its burden of demonstrating that it had a logical foundation and factual basis for requesting the alleged nonunit information. We note particularly that the employees whose unit status was not agreed upon (seasonal employees and part-timer merchandisers) were performing unit work, and the Union filed grievances concerning, among other things, their rates of pay and performance of unit work. The information sought was relevant to those grievances.

Our dissenting colleague argues that the Union did not satisfy its relevance burden because the parties stipulated that the unit status of the seasonal employees and part-time merchandisers would not be resolved in this proceeding. That argument misses the mark. The relevant inquiry for purposes of the relevancy determination is whether these employees were performing unit work, not whether they are ultimately determined to be in the bargaining unit. As noted above, the employees were performing unit work; the grievances concerned that fact; and the information was relevant to those grievances.

[2] We shall substitute a new notice in accordance with our recent decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001).

[3] Chairman Hurtgen notes that the information was relevant to a pending grievance. However, it was sought on November 21, at a time when unfair labor practice charges were pending. These charges were withdrawn prior to the hearing in this case. Notwithstanding the withdrawal, the Respondent persisted in its refusal to give the information. It was not until the filing of its posthearing brief to the judge, however, that the Respondent said it "can now reveal the information." In these circumstances, Chairman Hurtgen, rejects the defense that the refusal to give the information was privileged because the information could be used for discovery in unfair labor practice cases. Accordingly, the Respondent's exception in this respect lacks merit.

Measured against these legal principles, it is clear that in this case the Respondent never had any obligation to provide the nonunit information requested by the Union. In this regard the record is clear that notwithstanding repeated requests by the Respondent, the Union never established that the requested information was relevant to the Union's function as the collective-bargaining representative of Respondent's represented employees.

My colleagues find relevance to be established based upon unit placement issues and grievances specifically disclaimed by the General Counsel and the Charging Party. In this regard, on February 1, 2001, the parties executed a stipulation that "the issue of whether part-time or seasonal employees are part of the bargaining unit is not presented by the pleadings in this matter and will not be litigated in the unfair labor practice hearing in this matter." (Jt. Exh. 1.) The "bargaining unit work" issue advanced by my colleagues cannot be separated from the unit placement issues disclaimed by the General Counsel and the Charging Party. The unit placement and the unit work issues are one-in-the-same, and I see no basis for circumventing this stipulation in a strained attempt to find evidence of relevance where none exists.

In any event, merely claiming that certain employees are part of the bargaining unit or that they are performing —unit work—does not make it so, and does not relieve the Union of its burden of demonstrating the relevance of requested information. Here, the fact is that the employees in question (seasonal and part-time merchandising employees) were not performing unit work, nor did the Union claim to Respondent that they were performing unit work. The record plainly shows that the parties' collective-bargaining agreement allowed these nonunit employees to perform this work under certain circumstances. Notably, however, the information sought by the Union does not relate to this question at all.

Nor does the requested nonunit information relate in any manner to the contractual issues actually raised by the Union. Thus, the Union's initial articulated concern was that some bargaining unit employees were not being paid the proper wage rate and that others were being improperly charged for uniforms. Plainly, information regarding the nonunit employees does not relate to any question regarding the pay rates or uniform policies for unit employees.

Eventually, in response to Respondent's repeated requests, the Union stated that it had heard "that part-timers were actually working longer hours than the full timers, and that full timers were actually being reprimanded for working 40 [hours per week]." Again, the requested nonunit information does not relate to the hours of work or alleged reprimands of the "full-timers." Clearly, the requested information relates directly to the nonunit "part-timers," but the Union has not identified any contractual basis for its alleged concern for the number of hours worked by "part-timers," who it does not represent.

In sum, absent an identified nexus between a legitimate contractual concern and the requested information, the Union simply has not sustained its burden of demonstrating the relevance of the requested information. Since such relevance was not demonstrated to the Respondent either at the time of the request or in response to Respondent's repeated inquiries, the Respondent did not violate the Act by refusing to provide the requested information. Accordingly, I would dismiss the complaint.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT delay or refuse to provide United Industrial, Service, Transportation, Professional, and Government Workers of North America of the Seafarers International Union of North America, Atlantic, Gulf and Inland Waters District, AFL–CIO, the information it requests that is necessary and relevant to the performance of its duties as the representative of the following appropriate unit of employees:

> All production and maintenance employees, including route salesmen and truck drivers working in and out of our facilities located at 1850 W. Elliot Road, Tempe, Arizona and 2425 E. Hwy. 69, Prescott, Arizona; but excluding watchmen, guards, office clerical, professional and supervisory employees, and seasonal employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act. Section 7 provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent [limited by a lawful union-security] agreement.

WE WILL provide the Union with the information requested by it in letters to us dated May 22 and November 21, 2000, within 14 days from the date of this Order.

PHOENIX COCA-COLA BOTTLING COMPANY

Paul R. Irving, Atty., for the General Counsel.
Daniel B. Gilmore and *Joseph Y. McCoin, III, Attys. (Miller & Martin LLP)*, of Los Angeles, California, for the Respondent.
Stanley Lubin, Atty. (Lubin & Enoch, P.C.), of Phoenix, Arizona, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. This is an information case. The consolidated complaint that constitutes the General Counsel's operative pleading charges that Respondent failed to furnish the bargaining representative of its production, maintenance, route sales, and truckdriver employees at its Tempe and Prescott, Arizona facilities with relevant information requested on four separate occasions between May and November 2000. Respondent denies that it engaged in the unfair labor practices alleged.

The consolidated complaint (complaint) is based on two separate charges filed on July 6, 2000 (Case 28-CA-16595), and December 8, 2000[1] (Case 28–CA–16908). The complaint in the first-filed case issued on September 29; the consolidated complaint issued on January 16, 2001. I heard this case at Phoenix, Arizona, on February 1, 2001. Having now reviewed the entire record[2] mindful of the impressions left by the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent and Charging Party I find Respondent violated the Act as alleged based on the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent, Phoenix Coca-Cola Bottling Company, a Delaware corporation, maintains offices and places of business in Tempe and Prescott, Arizona. At each location Respondent is engaged in business as a manufacturer and distributor of beverages. In the 12-month period ending July 6, Respondent purchased and received at these two facilities products, goods, and materials valued in excess of $50,000 directly from locations outside the State of Arizona. Based on its direct inflow, I find Respondent meets the Board's discretionary standard for exercising its statutory jurisdiction in this case.

For a number of years the Union or Charging Party, United Industrial, Service, Transportation, Professional, and Government Workers of North America of the Seafarers International Union of North America, Atlantic, Gulf and Inland Waters District, AFL–CIO, has served as the exclusive collective-bargaining representative for certain of Respondent's employees assigned to its Tempe and Prescott facilities.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent and the Union are parties to a collective-bargaining agreement (agreement) effective for the period from February 1, 1999, through January 31, 2002. In the agreement, Respondent recognizes the Union as the exclusive collective-bargaining agent for all production, maintenance, route salesmen. and truckdrivers.[3] Article XIV of the agreement establishes wage and commission rates for a variety of classifications in five departments: (1) production; (2) warehouse; (3) cooler/fountain service; (4) fleet; and (5) distribution.[4] Excluding part-time and seasonal employees discussed below, the Company employs about 550 unit workers in various departments and classifications described as follows in the agreement's pay provisions:[5]

> *Production Department*: Quality Control/Syrup Room Master Technician; Quality Control/Syrup Room Technician; Sanitizer; Machine Operator; Forklift Operator; General Plant Employee; Plant Maintenance Master Mechanic; Plant Maintenance A, B and C; and Facilities Mechanic. *Warehouse Department*: General Plant Employee; and Forklift Operator. *Cooler/Fountain Service Department*: Master Technician; and Technicians I, II and III. *Fleet Department*: Mechanic. *Distribution Department*: Special Events Driver; Bulk Driver; Utility Driver; Merchandiser; Full Service Driver; and Base + Incentive Driver.

In addition, to these various classifications, the agreement contains certain relevant references to seasonal employees and part-time merchandisers. Thus a note to article I (the recognition clause) provides that Respondent may use the nonunit "[s]easonal employee . . . only in entry level positions, between the period of May 1 through November 30 in any given calen-

[1] All dates are in the 2000 calendar year unless otherwise indicated.
[2] I grant Charging Party's motion to correct transcript except as to those allegedly appearing at p. 61, l. 12, and p. 73, l. 4. I have granted the motion where the context supports the proposed change. As to the two rejected corrections, I am unable to find with certainty that they would be appropriate. No finding is made that the transcript is free of other errors. The motion to correct is hereby made a part of the record in this case.
[3] Specifically, art. I describes the unit as consisting of all production and maintenance employees, including route salesmen and truckdrivers, but excluding watchmen, guards, office clerical, professional and supervisory employees, and seasonal employees.
[4] Sec. 3 of art. XIV effectively establishes a leadperson classification that may be utilized at the discretion of the Company.
[5] Respondent's total employee complement numbers nearly 900.

dar year." As to part-time merchandisers, article VII, section 14, provides:[6]

> The Company may employ and utilize part-time merchandising employees to service accounts as business needs dictate. It is understood and agreed that such part-time merchandising employees may be used to supplement the regular workforce only when no full-time Merchandisers are laid off. The Company will not utilize part-time employees to deny reasonable overtime opportunities to full-time Merchandisers.

The agreement also provides that when the Company directs employees to work in a different classification, it must pay employees at the rate applicable to the classification worked. See article VIII, section 1.

Company drivers, regardless of their specific classification, may be assigned to deliver products to a retail store. Ordinarily the drivers simply drop the products in the retail establishment's storage area.[7] Respondent's merchandisers spend their work day traveling around to their assigned retail stores to clean, arrange, and replenish the product displays. Their district managers (supervisors) provide the merchandisers with "schematics" that contain instructions and directions about changing or phasing products out and the most desirable shelf location for the various products. The merchandisers do not work out of Respondent's facilities and only rarely have occasion to visit Respondent's production and warehouse facilities where other unit employees work.

B. The Complaint Allegations

The complaint alleges two sets of information requests, one in the late spring and the other in the fall. Complaint paragraph 6(a) alleges that around May 22, 2000, the Union submitted a written request for Respondent to furnish this information:

> Complete names, addresses, phone numbers, classifications, dates of hire, social security numbers for all full and part time merchandisers, all forklift operators, machine operators, all maintenance mechanics, all fleet mechanics, all sanitizers, all general plant employees, all special events drivers, all bulk drivers, all utility drivers all full service drivers, all Base plus Incentive drivers [and] the rates of pay for all employees.

Complaint paragraph 6(b) alleges that the Union made a written request on June 5 that Respondent furnish a "complete list of all employees and their classifications and rates of pay." Although couched in the complaint as a separate information request, I have concluded that the June 5 letter this allegation obviously alludes to actually amounts to a demand for all of the information sought on May 22 rather than a separate request altogether.

Complaint paragraph 6(c) alleges that the Union twice requested (on October 24 and November 21) that Respondent furnish this information:

> All alleged seasonal merchandisers and all merchandisers hired or working since 2/01/99, including the date they were originally hired, the original status as a merchandiser, [i.e.], full-time, part-time, and alleged seasonal. All dates when the company offered merchandisers the classifications full-time, part-time and alleged seasonal. The information should include all cronos or time sheets. All full-time, part-time and alleged seasonal merchandiser payroll information by original hire date, original classification, and any reclassifications of any merchandisers.

Unlike the information requests alluded to in paragraphs 6(a) and (b), the written request on November 21 expressly modifies a similar request on October 24. Accordingly, as to these two information requests made in the fall, I find that the request made on November 21 amounts to the operative request.

C. Relevant Evidence

Around June 1999, John Solano became an International representative for the Union.[8] Solano's union duties included servicing the Union's agreement with Respondent. By the middle of May, Solano had received employee complaints about receiving improper pay rates and incurring unwarranted paycheck deductions for uniforms.[9] In addition, he came to suspect that Respondent had begun utilizing part-time merchandiser and seasonal employee categories in a manner not permitted under the parties' agreement.

The employee complaints prompted Solano to submit a written information request dated May 22 to Pat Edgar, Respondent's human resources manager. Solano asked Edgar to furnish the following information: the complete names, addresses, phone numbers, classifications, dates of hire, social security numbers, and rates of pay for all employees under the agreement. His letter specifically alludes to the following employee categories: full- and part-time merchandisers, forklift operators, machine operators, maintenance mechanics, fleet mechanics, cooler service technicians, quality control technicians, sanitizers, general plant employees, and the special events, bulk, utility, full-service, and base-plus-incentive drivers. (GC Exh. 3.) Solano explained: "[W]e needed to make sure that the contract was being upheld, and all employees were being treated fairly."

Edgar, who claimed that she knew of no issue at the time that would make the information sought relevant, responded to Solano's request orally and in writing. At some time between May 22 and 26, Solano and Union President Stacy Sanchez met with Edgar in her office. During this meeting Solano explained

[6] Art. VII, sec. 15, also provides: "The Company may use part-time (non-bargaining unit) employees in the Special Events department to supplement the number of full-time employees required to maintain the business." Although Respondent and Union differ as to the unit status of part-time employees generally, no one points to this provision or the group covered as having any relevance to this dispute.

[7] Drivers occasionally stock the product on the retail floor but ordinarily this work is left to the merchandisers.

[8] Before that, Respondent employed Solano as a lab technician for about 20 years.

[9] If Respondent requires an employee to work in a uniform, agreement art. XXVIII provides for Respondent to furnish a certain quantity of uniforms and pay for their maintenance. Sec. 2 of that art. permits Respondent to deduct the uniforms' cost or the cleaning costs from a terminated employee's final paycheck if an employee fails to return furnished uniforms "cleaned and pressed."

that he sought the requested information to find out if Respondent had been correctly paying employees and complying with the provision concerning uniforms. In this discussion, Solano addressed Respondent's use of part-time merchandisers. Edgar told Solano that, as part-time employees were not unit members, the Company would provide the Union with no information regarding them.

Edgar then sent Solano a letter dated May 26. In that letter, Edgar referred Solano to article III of the agreement and declined to furnish any information other than the name, classification, and the date on which the Company hired new employees. Edgar's letter asserts that Solano's "request for additional information is not within the scope of our agreement." General Counsel's Exhibit 4. The contractual checkoff provision cited by Edgar includes a requirement that Respondent provide the Union each month with a written notice of the name, classification, and date of hire for each *new* employee who completed the probationary period during the previous month. Edgar's May 26 letter failed to provide the vast bulk of information Solano sought in his May 22 letter. Nor did Edgar make any reference in her May 26 letter to her claim at the May 22 meeting that the unit excluded part-timers. Edgar admitted that she understood the breadth of the information requested but explained that she limited the information provided to that called for under article III because she thought Solano "didn't know what he was requesting."

Edgar's May 26 letter prompted Union Counsel Stanley Lubin to write a "follow-up" letter dated Saturday, June 5. In his letter Lubin decried the Company's failure to furnish the Union with a "complete list of all employees and their classifications and rates of pay." Lubin explained that the Union needed this information to "assess" the merits of claims by "numerous employees that they are being paid at less than the contractual rates of pay." He further asserted that the Union needed the information to "determine whether it should file a grievance" concerning the pay issue. Lubin explained that the Union based its request on the Act rather than the agreement as Edgar had intimated. He concluded by threatening to file an unfair labor practice charge unless the Company furnished the requested information by the next Friday. (GC Exh. 5.)

Edgar responded to Lubin in a letter dated June 6. In that letter she offered to rectify any "pay issues" the Union brought to her attention and asked for the Union to "provide specifics." She asserted that the Union "has not contacted me verbally or in writing about pay issues" and explained "[i]nformation would be provided on specific grievance issues." She concluded by lecturing the Union on its responsibilities and stating that the "Union's vague request for wide sweeping information is inappropriate and unnecessary." Needless to say, she provided none of the requested information.

The Union promptly filed a grievance dated June 6 claiming, "some merchandisers are not being paid the negotiated rate per the bargaining agreement." This grievance requests "[a]ll merchandisers should be paid the negotiated rate from January 6, 2000 or the past 6 months also including overtime." (GC Exh. 7.) In a memo to Union President Sanchez dated June 8, Edgar again asked "for more specific information." Because she felt the grievance had been couched as a "payroll issue" she urged the Union to respond in a timely fashion providing "specifics." She concluded by advising that the Company was aware of, and intended to remedy "Pete Ruiz' situation" by the following payday and asked that Sanchez advise "whom else needs immediate attention asap." (GC Exh. 8.)

In a letter dated June 9, Lubin responded to Edgar's June 6 memo to Sanchez. He stated that there were no specifics but the Union had received "reports from a number of employees that leads it to believe that some may be paid at the wrong rate." He explained that the Union "wanted to investigate the matter," that some employees were reluctant to allow their names to be brought to the attention of the Company, and that the Union "has asked for the information that it feels necessary to fully investigate." Lubin then asserted that the Company was "required to comply" with the request. He also asserted that it did not matter whether the Company agreed with the "claims or agree[d] that there is fear amongst employees." Finally, he characterized the information as "reasonable and relevant to a bargaining unit issue" and asserted that the Union intended to take "appropriate action" if the material had not been furnished by the following Monday.

On June 14, Edgar sent Sanchez a memo, apparently in response to his request for a "final answer" regarding the pending grievance. She advised Sanchez that the Company had corrected the Ruiz pay problem and that there were no other disparities with merchandiser wages. Respondent still furnished no information that would permit the Union to make its own independent assessment of that claim. The Union took the grievance to the second step of the parties' procedure and filed an unfair labor practice charge on July 5.

On July 13, Edgar, Solano, and Sanchez held a second-step grievance meeting on the merchandiser grievance.[10] A discussion occurred during this meeting as to why the Union needed the information previously sought in May. When Edgar pressed the two union representatives on this subject, they explained that they needed the information because of reports they had received about a widespread practice of paying full-time merchandisers varying pay rates and the failure to pay part-time merchandisers at the same rates paid the full-timers. Sanchez explained that the union representatives understood from what they heard "that part-timers were actually working longer hours than the full timers, and that full timers were actually being reprimanded for working 40 [hours per week]." This situation, at least from Sanchez' point of view, was in direct violation of the collective-bargaining agreement and the Union wanted the information sought in order to police the agreement.[11] Edgar finally provided the union agents with a list of all full-time merchandisers, their date of hire, and their rate of

[10] R. Br. 3 refers to a June 13, 2000 meeting involving "Ms. Edgar . . . Mr. Solano and Stacey Sanchez." This reference appears to allude to the second-step grievance meeting held on July 13 rather than June 13.

[11] Sanchez could not recall specifically whether the Union's concern he related was expressed to Edgar at the July 13 meeting. However, his testimony shows that the broad nature of the problem the Union sought to investigate was made very clear to Edgar at several meetings. Sanchez impressed me as a very credible witness. To the extent this aspect of his testimony conflicts with that of any other witness, I credit Sanchez.

pay. The union agents, however, continued to claim that this limited data failed to satisfy their information request. When pressed for further specific claims regarding the grievance, the union agents called to Edgar's attention their belief that another employee, Jesus Figueroa, had not been paid properly on one recent occasion.

The following day Edgar issued the Company's second-step response in which she acknowledged one improper payment to Figueroa and agreed to correct it on his next paycheck if the error was verified by the payroll department. Apart from that minor error, Edgar asserted that the "Company is not in violation of the contract." In the next to last two paragraphs of her response Edgar took the Union to task for "filing vague, wide-sweeping grievances."

Nothing further happened regarding the information request until August 22. At that time Edgar sent a letter to NLRB Agent William Mabry, with a copy to Union Attorney Lubin, in which she submitted the names, addresses, telephone numbers, and detailed pay history for the full-time merchandisers for the period from the first of the calendar year up to the time of her letter. She also informed Mabry that the Union through Lubin "is not currently seeking additional information regarding Merchandisers, or any information concerning other employees, in order to conduct the desired review." Admittedly, the Company provided no information about the part-time merchandisers to Mabry or the Union because, Edgar's letter explains, Lubin and the Company's counsel continued their active discussions seeking to resolve the part-time merchandiser's unit status. A week later, Edgar reported in a letter to Mabry, again with a copy to Lubin and others, that the Company awaited information from Lubin about the part-timers unit status. She asserted the Company's belief that it had provided all information required.

Because the matter remained unresolved, the Regional Director issued the complaint in Case 28–CA–16595 on September 29. However, shortly thereafter the merchandiser issue was complicated by another twist. Around that time, the Union filed a series of grievances relating to the pay and benefits of merchandisers. Then Edgar, at an ensuing grievance meeting with Solano and Sanchez in October, alluded to laying off the seasonal merchandisers because the agreement restricted their employment to the period between May 1 and November 30. This, Solano claimed, was the first either he or Sanchez knew that the Company was using seasonal employees for merchandiser work and both expressed surprise. Theretofore, Solano claims, seasonals amounted to untrained workers employed in entry-level, unskilled positions at the warehouse, mainly performing cleanup work.

Edgar's disclosure about the seasonal employees gave rise to Solano's October 24 letter to her requesting extensive information pertaining to the merchandisers. Two days later, the Union filed a grievance alleging, in effect, the Company unilaterally changed the agreement by classifying part-time merchandisers as seasonal employees. The October 24 request sought the following information concerning all merchandisers hired since February 1, 1999: (1) their date of hire and the beginning classification, i.e., full time, part time, or seasonal; (2) the dates on which those merchandisers were offered the full-time, part-time, and seasonal status; (3) documentation in the form of "control sheets . . . cronos or time sheets; (4) probationary period extensions, disciplinary actions, employment applications, and management responses to applicants that were hired; (5) payroll information for all merchandisers regardless of their classification or reclassification; (6) the names of the merchandiser supervisors, the names of those they supervise, and the length of time the supervisors have been in their positions; and (7) the names of the managers to whom the supervisors report. In a letter dated November 2, Edgar summarily rejected this request on the ground that it was "burdensome." Additionally, she again asserted that the seasonal employees were excluded from the current agreement.

On November 21, Solano sent Edgar a letter purporting to revise his October request. In the November 21 letter, he sought the following information as to all full-time, part-time, or seasonal merchandisers: (1) their date of hire and their original classification; (2) the dates on which Respondent offered any merchandiser the full-time, part-time, or seasonal classification; (3) the "cronos or time sheets" showing the foregoing information; and (4) the payroll information reflecting for all merchandisers their "original date of hire, original classification and any reclassifications of any merchandisers."

In a letter dated the same date, Edgar acknowledged the receipt by fax of Solano's letter. She noted that the "part-time and seasonal merchandisers are not covered by the cba" and that "the exclusion of part-time and seasonal merchandisers from the bargaining unit is the subject of several matters pending before the NLRB and several grievances."[12] She then essentially declined to provide the information because it would "not serve any objective purpose on our part to continue to spend time with this topic until it is formally resolved."

D. Further Findings and Conclusions

Upon request, an employer has the legal duty to furnish its employees' bargaining agent during the term of the agreement with information relevant and necessary to the performance of its statutory duties. *NLRB v. Acme Industrial. Co*., 385 U.S. 432. (1967). The law deems information about the wages, hours, and other terms and conditions of employment of unit employees to be presumptively relevant. *Timken Roller Bearing Co*., 138 NLRB 15 (1962), enfd. 325 F.2d 746, 750 (6th Cir. 1963), cert. denied 376 U.S. 971 (1964). The duty to furnish information may also extend to providing requested information related to nonunit employees especially where, as here, those employees perform unit work. *Lenox Hill Hospital*, 327 NLRB 1065 (1999); *United Graphics*, 281 NLRB 463 (1986). For information requests relating to nonunit persons, the re-

[12] In its brief, Respondent asked that I take notice of unfair labor practice charges filed by the Union in Cases 28–CA–16823 and 28–16843–1 on October 20 and 31, respectively and the letters of the Regional Director notifying the parties that the charges had been withdrawn in January 2001. Respondent appended the charges and the letters to its brief. Charging Party moved to strike the attached charges and the Regional Director's letters. The Charging Party and General Counsel vigorously oppose consideration of these materials. I find the opposition lacks merit and I take notice as requested. See Rule 201(f), Federal Rules of Evidence.

questing party must show that there is a logical foundation and a factual basis for the requested information. *Postal Service*, 310 NLRB 391 (1993). But a "liberal discovery standard" applies regardless of the employees' unit status. 281 NLRB at 465. The Union satisfies this standard by a showing of potential or probable relevance. *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994). An employer's duty to bargain encompasses an obligation to furnish the employee representative with relevant information necessary for it to bargain over employee grievances. *Hobelmann Port Services*, 317 NLRB 279 (1995). A labor organization is "entitled to . . . information . . . to judge for [itself] whether to press [its] claim in the contractual grievance procedure or before the Board or Courts." *Maben Energy Corp*., 295 NLRB 149 (1989).

In agreement with the General Counsel, I find that the Union's various requests derive substantial justification and relevance from the terms of the collective-bargaining agreement as well as the type and location of the merchandisers' work. As to the employees unquestionably in the unit, the information requested would have been presumptively relevant. Respondent provided nothing to rebut this presumption. Hence, it should have been furnished without any undue delay whatever.

The parties' collective-bargaining agreement itself does not specifically exclude the disputed part-time merchandisers but it expressly excludes all seasonal employees. Even assuming the parties' agreement excluded the part-time merchandisers as well, Respondent still would have a duty to furnish information about both groups of nonunit individuals "engaged in performing the same tasks as rank-and-file employees within the bargaining unit [as it] 'relates directly to the policing of contract terms.'" *United Graphics, supra* at 465. Here, Edgar consistently asserted when dealing with the union agents that Respondent had no duty to furnish the requested information as to the part-time merchandisers and seasonal employees simply because they were not unit employees. As is evident, that stance is simply wrong. Contrary to Respondent's claim, I find the Union provided an ample "logical foundation and factual basis" supporting the relevance of the requested information.

The contractual provisions prohibiting the use of part-time merchandiser when full-timers were laid off or to deny full-timers overtime opportunities as well as the employment period and pay limitations imposed on seasonal employees amply justifies all of the requested information. The fact that all merchandisers mainly worked alone at locations away from the production facility significantly reduced the opportunity for union agents to talk with them or to observe first hand their identity, their dates of hire, the amount of work they performed, and their conditions of employment. Additionally, the fact that the part-timers and seasonal employees received no benefits would provide Respondent with ample incentive to manipulate these employees to the detriment of the full-time merchandisers. Hence, the amount of work and terms of employment of the part-time merchandisers, some of whom may have been reclassified at some point as seasonal employees at certain times of the year, would be information of considerable concern to the Union in representing the unit employees. That information, readily accessible by Respondent, would be essentially unobtainable by the Union unless it undertook some sort of Herculean detective work.

Yet Respondent argues that the Union failed to "explain the relevancy of its request for information concerning non–unit employees to the Company." I reject this claim. The argument really amounts to an assertion that the Union failed to convince Respondent's representatives who assumed they had an absolute right to deny the information to the Union by claiming that some of it might pertain to nonunit employees. Couched in these terms, Respondent's argument becomes recognizable as a self-serving rationalization devised as a strategy to deflect attention from its persistent refusal to furnish the requested information solely because of its erroneous claim that it had no duty at all to furnish information about nonunit employees. For reasons explained above, the terms of the agreement concerning part-time merchandisers and seasonal employees alone would likely satisfy the relevance standard applicable to the information sought here. But the Union provided much, much more justification for the requested information. The verbal and written assertions by Solano, Sanchez, and Lubin to Edgar concerning reports of pay errors, the alleged use [of] noncontractual pay rates, the misuse of part-timers and seasonal employees, and the imposition of overtime restrictions on full-timers all serve to establish the relevance of the requested information beyond any reasonable doubt. Edgar's various written responses amount to little more than disingenuous dodges, evidencing a clear intent to avoid the legal duty to furnish the requested information.

In addition, I also reject Respondent's claim that it had no duty to furnish the requested name and address information concerning the alleged nonunit, part-time merchandisers and seasonal employees. Respondent asserts it is not obliged to assist the Union to organize employees and the name and address information would do just that. In the past, the Board has repeatedly rejected that claim by employers to justify their refusal to furnish relevant and necessary information. See, e.g., *Central Manor Home for Adults*, 320 NLRB 1009, 1099 (1996).

Finally, Respondent's claims that the May and November requests are moot also lack merit. Respondent claims that the parties' hearing stipulation that the unit placement dispute concerning the part-time merchandisers and seasonal employees need not be resolved in this proceeding (Jt. Exh. 1) precludes the General Counsel from seeking any information sought on May 22 beyond that already furnished, i.e., that pertaining to the full-time merchandisers. Respondent further argues that it offered at the start of the hearing to furnish the information sought in the November 21 request but the General Counsel and the Union rejected that offer. As to the former, nothing in Joint Exhibit 1 precludes the Union from having a right to the information requested in its May 22 letter. This argument amounts to little other than another variant on its consistent theme that it is not required to furnish information concerning nonunit employees. As to the latter, Respondent specifically declined to furnish any names of employees in connection with the November 21 request. For that reason, I find that Respondent's offer insufficient to meet the requests contained in the Union's November 21 letter. Respondent's assertion that the

November 21 letter contains no request for the names of merchandiser employees plainly lacks merit.

Accordingly, I find the information sought in Solano's letters of May 22 and November 21, including that pertaining to part-time and seasonal employees but not including the social security numbers sought on May 22, to be relevant and necessary for the performance of the Union's statutory duties.[13] I conclude, therefore, that Respondent's refusal to furnish most of the information sought and its undue delay in submitting what little it did provide violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. The information requested by the Union in its letters to the Company dated May 22 and November 21, 2000, including that pertaining to part-time and seasonal employees but not including the social security numbers sought on May 22, is necessary and relevant for it to perform its statutory duties as the collective-bargaining agent for Respondent's employees.

2. By delaying or refusing to furnish the Union with the necessary and relevant information described in paragraph 1, above, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

My recommended order requires Respondent to furnish all of the information requested by the Union's letters to the Company dated May 22 and November 21, with the exception of the social security numbers sought in the May 22 letter. In connection with the November 21 request, my recommended Order requires the production of employee names associated with the requested information. Respondent need not furnish information already provided. If, during the compliance proceedings, the Union concurs with the waiver claims made in Edgar's letter of August 22 (GC Exh. 12), those claims will be given effect.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

ORDER

The Respondent, Phoenix Coca-Cola Bottling Company, Tempe and Prescott, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Delaying or refusing to provide United Industrial, Service, Transportation, Professional, and Government Workers of North America of the Seafarers International Union of North America, Atlantic, Gulf and Inland Waters District, AFL–CIO with the information requested by its letters dated May 22 and November 21, 2000, as provided in the remedy section of this decision, that is necessary and relevant to the performance of its duties as the representative of the following appropriate unit of employees:

> All production and maintenance employees, including route salesmen and truck drivers working in and out of our facilities located at 1850 W. Elliot Road, Tempe, Arizona, and 2425 E. Hwy. 69, Prescott, Arizona; but excluding watchmen, guards, office clerical, professional and supervisory employees, and seasonal employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, provide the Union with the information specified in 1(a) above.

(b) Within 14 days after service by the Region, post at its facilities in Tempe and Prescott, Arizona, copies of the attached notice marked "Appendix."[15] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 5, 2000.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[13] The Union's Br., p. 2 at fn. 3, states that its request for social security numbers has been withdrawn. Regardless, the General Counsel failed to prove their relevance here as required. *Capital City Fire Protection*, 332 NLRB No. 129 at fn. 2 (2000) (not reported in Board volumes) and the cases cited there.

[14] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[15] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."